

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CRIMINAL ACTION NO. 04-10217-GAO

UNITED STATES OF AMERICA

v.

DARREN F. WILDER,
Defendant

ORDER ON MOTIONS IN LIMINE

March 10, 2006

O'TOOLE, D.J.

After hearing, I make the following orders with respect to pending motions in limine:

1. Defendant's Motion For Jury Questionnaire (Dkt. 56) is DENIED.
2. Defendant's Motion In Limine Regarding E-Mail Evidence (Dkt. 57) is DENIED without prejudice to the defendant's right to renew his objection at trial if he believes the government's foundation for the evidence is insufficient.
3. Defendant's Motion in Limine to Exclude Defendant's Prior Conviction, Internet Subscriptions, Internet Logs and Programs Installed on the Defendant's Computer (Dkt. 58) is GRANTED IN PART and DENIED IN PART.

The probative value of evidence relating to the defendant's prior conviction is marginal and substantially outweighed by the danger of unfair prejudice to the defendant. Moreover, the probative aspects of the evidence – its tendency to demonstrate the defendant's familiarity with the acquisition of images via the Internet, for instance – tends to be cumulative of other evidence to be offered by the government that does not carry the danger of unfair prejudice that the prior conviction does. Therefore, the Defendant's motion to exclude evidence of the defendant's prior conviction is GRANTED.

With respect to the internet subscriptions, internet logs and programs installed on the defendant's computer, constituting direct evidence of the crime charged, the Defendant's motion to exclude is DENIED.

4. Defendant's Motion in Limine to Exclude Evidence of Images Which Do Not Depict Minors Engaged in Sexually Explicit Conduct (Dkt. 59) is DENIED IN PART and RESERVED IN PART.

I have had the opportunity to review all of the images identified in the indictment and conclude that a reasonable jury could find that they depict minors engaged in sexually explicit conduct. The Defendant's motion to exclude these images is therefore DENIED.

I RESERVE decision with respect to those images identified on the government's exhibit list but not yet provided to me for review.

5. Defendant's Motion in Limine to Preclude Evidence and Testimony Regarding EnCase Forensic Software (Dkt. 60) is DENIED without prejudice to renewal at trial should the government fail to establish an adequate foundation for the evidence and/or testimony.
6. Defendant's Motion in Limine to Preclude Testimony of Government's Expert Witnesses (Dkt. 61) is DENIED IN PART and RESERVED IN PART.

The motion is DENIED with respect to the testimony of Dr. Celeste Wilson and Lam Nguyen.

I RESERVE decision on the admissibility of the testimony of Thomas Musheno pending further hearing.

7. Defendant's Motion to Continue Trial Date and/or Conduct Detailed Voir Dire Concerning Parade Magazine Article Dated February 19, 2006 (Dkt. 63) is DENIED. Inquiry into the issue of potential prejudicial pretrial publicity will be made as necessary during selection of the jury.
8. Government's Motion in Limine Pursuant to Federal Rule of Evidence 404 (b) (Dkt. 64) is DENIED. (See paragraph 3 above.)

It is SO ORDERED.

March 10, 2006
DATE

\s\ George A. O'Toole, Jr.
DISTRICT JUDGE